IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO. 600 OF 2005

IN

NOTICE OF MOTION NO. 830 OF 2005

IN

SUIT NO. 989 OF 2005

Dr. Suhas H. Pophale, Indian Inhabitant)
age 53, Proprietor of Pophale Nursing)
Home, having address at Indian)
Mercantile Mansion, Opp. C.J.Hall and)
Museum, Madam Cama Road, Fort,)
Mumbai 400 001.)..Appellant
(Org.Plaintiff)

Versus

Dr. Hari V. Pophale, Age 85 years)
Indian Inhabitant, residing at)
32, Ashiwn Co-operative Housing)
Society, Jai Bhavani Road,)
opp. Up-Nagar Bus Stop,)
Nasik-422 006.)..Respondent
(Org.Defendant No.1)

Mr. Prashant B3eri i/b. M/s. Beri & Co. for
the Appellant.
Mr. Bharat Vaishnawa i/b. M/s. Bharat Vaishnawa & Co.

for the Respondent.

CORAM: B.H.MARLAPALLE,J.

DATE : 9th September,2005.

ORAL ORDER :

1. The father and son who are both Doctors have come in the open against each other and the Appellant-son approached the City Civil Court by filing S.C. Suit No.989 of 2005 seeking the relief of permanent injunction against the father. The father is about 87 years of age and the son is about 55 years. Notice of Motion No.830 of 2005 has been dismissed by declining to grant any interim relief by the learned Judge of the City Civil Court by his order dated 30.3.2005 and hence this Appeal against the said order.

2. The dispute between the father and son revolves around a well-known Nursing Home by name "Pophale Nursing Home" located in South Mumbai and it was started by the father in the early 60s i.e. more than 40 years ago.

3. There is no dispute that the father by his letter dated 19.6.2003 claiming to be the proprietor and Medical Director of Pophale Nursing Home, handed over his full authority of both the positions to the

Plaintiff-son. This change was perhaps on account of the father's advanced age. The father also made a declaration in favour of the son on or about 22.12.2003 claiming that he had voluntarily and officially retired from Medical Directorship and Proprietorship of Pophale Nursing Home and shifted permanently to Nashik where his younger son, Sunil, is a successful industrialist. The said Declaration further states that the Plaintiff - Dr. Suhas Hari Pophale shall be the successor in office and responsible for all matters pertaining to the Nursing Home administration including possession of movable/immovable property and that he shall be responsible for all transactions, monetary or otherwise in respect of the Nursing Home. The copies of this Declaration were forwarded to the authorities concerned. However, the year 2004 brought hostility between the father and son and the parties went to the extent of fighting each other through legal notices rather than discussing the differences at home or in the Hospital. The father therefore revoked his decision of handing over the proprietorship as well as the Directorship of the Nursing Home and in retaliation and perhaps left with no option, the son approached the City Civil Court, but failed in getting any interim injunction against the father.

4. When this Appeal had come up for hearing initially, it was felt more desirable that the father and son with the help of other family members should explore the possibilities of settling differences between them rather than inviting any Court orders and the learned Counsel for the parties were also keen that the parties settle the differences. An attempt was made for mediation with the help of Mrs. Sudha Pophale, Mr. Sunil Pophale and Mrs. Sunita Ramnathkar. Mrs. Sudha Pophale is the mother, Sunil younger brother and Sunita the sister of the Plaintiff. The first two family members could not attend the meeting for mediation, but the sister did respond and spoke her mind when the learned Counsel for the respective parties were also present. Mr. Sunil Pophale addressed a letter to the Court expressing his opinion and so did Mrs. Sudha Pophale. All these family members also emphasised that the differences between the father and the son must be settled once for all not only in the interest of the Nursing Home but also in the interest of the health of the father and more importantly the medical services that the Nursing Home is committed to. Consequently, both the parties have placed their respective proposals on record for an amicable settlement, but there was no meeting ground and therefore this Appeal has to be decided on merits.But the parties left it to

the Court to pass an equitable order.

5. In the suit, the father has been impleaded as defendant No.1 and the mother is the defendant No.2. From the impugned order, it is clear that the trial Court was of the opinion that the differences between the parties were required to be settled at the earliest possible by following the modes available under Section 89 of the Code of Civil Procedure. The trial Court declined to grant any interim relief in favour of the Plaintiff by noting the following assurances of the defendant No.1 - father.

> "I am not inclined to disturb or dispossess the Plaintiff from the Nursing Home without following due process of law and his statement should be accepted."

. So far as the father is concerned, the trial Court noted his contention that he had played such a role for years together and he would not be denied access to the same whenever he intended to come and see the patients.

6. In the Notice of Motion, the following reliefs were sought by way of temporary injunction :-

"(a) Pending the hearing and final disposal of the suit the Defendant No.1, his servants, agents or any person or persons claiming through or under him shall be restrained from dispossessing, disturbing, obstructing, interfering full, free use and occupation and enjoyment of the said premises;

(b) Pending the hearing and final disposal of the suit the Defendant No.1, his servants, agents or any person or persons claiming through or under him shall be restrained and prohibited from entering/causing disturbances in the said premises."

7. Pophale Nursing Home is located in the premises owned by the Oriental Insurance Co.Ltd., a Government of India Undertaking and initially the premises were granted to the Defendant No.1 sometime in the year 1961-62 for residential purpose. With the permission of the Corporation and other concerned authorities, the premises were allowed to be used for Nursing Home and in

the year 1969, the tenancy of the premises came to be transferred in the name of the Defendant No.2 from the name of the Defendant No.1 and all along the Defendant No.2 is the tenant. However, the medical services from the suit premises were started by the father and subsequently the son joined the father. The plaintiff's wife is also a Gynaecologist and recently his son also is an additional member of the medical team. Thus, the defendant No.2 is the tenant of the suit premises and defendant No.1 started the medical services i.e. Pophale Nursing Home. The record also shows that the defendant No.2 has also contributed substantially for the Family Welfare Centre which was inaugurated in the late 60s at the suit premises.

8. The defendant No.1 now contends that the plaintiff was to be in possession of Pophale Nursing Home as per the letter dated 19.6.2003 and the declaration made in December 2003, but the plaintiff has not come upto the expectations. On the contrary, as alleged by the defendant No.1, the plaintiff has created more problems which have tarnished the reputation of the Nursing Home and, therefore, to retain the reputation of the Nursing Home, the father wants to withdraw the authority he had given to the son. The father claims that he has already withdrawn the authority so given and, therefore, he cannot be restrained by any temporary

orders or by any final decree. The father has also alleged that the son fabricated some documents and, therefore, he lost confidence. The trial Court in the impugned order has not considered the merit of the case and perhaps felt that as at present there was no need to pass any order of temporary injunction when the defendant No.1 himself made a statement that the plaintiff would not be dispossessed or restrained in any manner without following the due process of law.

9. The other family members in the mediation team as well as the written communications sent to the Court do not support the father's opinion that the plaintiff-son is either incompetent or he has acted at any time in such a manner that the father was justified in forming his opinion that the son did not maintain the terms and conditions of transfer. At the same time, they are unanimous in their view that if the father desires to see some patients in the Nursing Home during fixed hours and his visits to the Nursing Home, he should be allowed taking into consideration his standing of about 50 years as a medical practitioner. The Plaintiff has no second opinion on this issue. It was also brought to the attention of this Court during the mediation meetings that the defendants should be paid some fixed amount every month by the plaintiff so as to provide for their maintenance either at Nashik or at

Mumbai. The plaintiff has no objection to this, but submits that as at present the old liabilities in terms of payment of bills etc. are at a huge amount of Rs.30 lakhs and he has been receiving notices from all these authorities like the Electricity Board, Provident Fund Office and so on and so forth. According to him, if the Nursing Home has to continue to maintain its good reputation, he and his wife will have to have full control over the Nursing Home. None of the family members have any objection to this and more so when both the defendants are in their advanced age. Mrs. Sudha Pophale comes out as an affectionate and caring mother as well as wife and as per her, the plaintiff-son is a competent doctor sufficiently capable of running the Nursing Home with the same glory as his father had done. She has denied that the son has indulged in any of the acts which have been alleged by the father after December 2003. An affidavit to this effect has been filed.

10. Be that as it may, in the interest of both the parties, the differences between them leading to the institution of proceedings could be resolved by the following order :-

O R D E R

(a) Dr. Hari V.Pophale shall be provided the Consultation Room atleast on two days in a week for the time being i.e. on Tuesday and Thursday between fixed hours to be notified by him and for duration of two hours. The Plaintiff shall display the Board of Dr. Hari V.Pophale being available for medical consultation during these two days and hours and he shall ensure that all the appointments for consultation of Dr. Hari V.Pophale are listed and communicated to him in advance. Should Dr. Hari V.Pophale desire to pay a short visit the Nursing Home to meet any of the family members to or members of the medical team on any other day, he shall not be prohibited.

(b) By way of fixed monthly maintenance charges, the Plaintiff shall pay to the Defendants an amount of 15% of the net monthly income of the Nursing Home and the amount so paid will be by way of two cheques of equal amount to be drawn separately in the name of defendant No.1 and defendant No.2. Should there be any dispute regarding the calculation of this amount, it shall be resolved by a majority decision of Mrs. Sudha Pophale, Mr. Sunil Pophale and Mrs.

Sunita Ramnathkar.

(c) As in the past, the Plaintiff shall be responsible for the administration and outgoings of the Nursing Home in terms of payment of Electricity Bills, salaries and all other expenses. The declaration dated 22.12.2003 made by defendant No.1 in favour of the Plaintiff shall continue to operate.

(d) As in the past, the Defendant No.1 will continue to support the Nursing Home and more particularly the Plaintiff in the efficient administration of the Nursing Home and he would not take any step or any action which will prejudice or adversely affect the medical services and administration of the Nursing Home. After all, the father is aware that the Nursing Home is his baby as much as the Plaintiff is.

11. It is hoped that the above arrangements will work to the satisfaction of both the parties and the Plaintiff may withdraw the suit.

12. Notice of Motion No.830 of 2005 is decided in the above terms and the Appeal is disposed of

accordingly.

13. In view of the above order, C.A. No.1009 of 2005 does not survive.

(B.H.MARLAPALLE,J.)